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## Sec. 311-1. Purpose.

To provide funds for the purposes of general municipal operations, maintenance, new equipment, extension and enlargement of municipal services and facilities and capital improvements of the City of Cincinnati, including the pledging and payment of tax revenues for the principal and interest on bonds and notes issued to finance permanent improvements, and to provide public transit purposes generally and without limitation and including both capital and current operating expenses, there shall be, and is hereby, levied a tax on taxable income and on net profits as hereinafter provided.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

# Sec. 311-2. Purpose of Infrastructure Levy and Imposition of Tax.

To provide funds for current operating expenses and permanent improvement purposes, including both direct and indirect cost (including the pledging and payment of tax revenues for the principal and interest on bonds and notes issued to finance permanent improvements) related to the construction, operation, equipment, maintenance and repair of the infrastructure of the city, including, but not limited to streets, roads, thoroughfares, avenues, expressways, parkways, sidewalks, plazas, parks, recreation areas, grounds, ways, bridges, viaducts, tunnels, walls, structures, buildings, fixtures, traffic signals, street lighting and marking, landscaping, signage, telecommunications and information systems, there shall be, and is hereby levied on and after July l, 1988, an annual tax at the rate of one-tenth of one percent (0.1%) per annum, in addition to any other tax imposed by Chapter 311 pursuant to authority granted in the charter of the city, and subject to the provisions of Section 311-18 and 311-75 herein, upon those categories of income specified in Section 311-5, as amended.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-3. Definitions.

For the purposes of this chapter, the words and phrases defined in the sections hereunder shall have the meanings herein respectively ascribed to them unless the context clearly indicates or requires a different meaning.

The singular shall include the plural, and the masculine shall include the feminine and the neuter.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-3-A. Adjusted Federal Taxable Income.

"Adjusted federal taxable income" means a C corporation's federal taxable income before net operating losses and special deductions as determined under the Internal Revenue Code, adjusted as follows:

(a) Deduct intangible income to the extent included in federal taxable income. The deduction shall be allowed regardless of whether the intangible income relates to assets used in a trade or business or assets held for the production of income.

- (b) Add an amount equal to five percent of intangible income deducted under Section 311-3-A(a), but exclude that portion of intangible income directly related to the sale, exchange, or other disposition of property described in section 1221 of the Internal Revenue Code;
- (c) Add any losses allowed as a deduction in the computation of federal taxable income if the losses directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code:
- (d) Except as provided in Section 311-3-A(d)(ii):
  - (i) Deduct income and gain included in federal taxable income to the extent the income and gain directly relate to the sale, exchange, or other disposition of an asset described in section 1221 or 1231 of the Internal Revenue Code; and
  - (ii) Section 311-3-A(d)(i) does not apply to the extent the income or gain is income or gain described in section 1245 or 1250 of the Internal Revenue Code;
- (e) Add taxes on or measured by net income allowed as a deduction in the computation of federal taxable income;
- (f) In the case of a real estate investment trust and regulated investment company, add all amounts with respect to dividends to, distributions to, or amounts set aside for or credited to the benefit of investors allowed as a deduction in the computation of federal taxable income;
- (g) If the taxpayer is not a C corporation and is not an individual, the taxpayer shall compute adjusted federal taxable income as if the taxpayer were a C corporation, except:
  - (i) Guaranteed payments and other similar amounts paid or accrued to a partner, former partner, member or former member shall not be allowed as a deductible expense; and
  - (ii) Amounts paid or accrued to a qualified self-employed retirement plan with respect to an owner or owner-employee of the taxpayer, amounts paid or accrued to or for health insurance for an owner or owner-employee, and amounts paid or accrued to or for life insurance for an owner or owner-employee shall not be allowed as a deduction.

This definition does not apply to any taxpayer required to file a return under Ohio Revised Code section 5745.03 or to the net profit from a sole proprietorship.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-3-B1. Board of Review.

"Board of review" means the board created by and constituted as provided in Section 311-69 of this chapter.

#### Sec. 311-3-B2. Business.

"Business" means an enterprise, activity, profession, or undertaking of any nature conducted for profit or ordinarily conducted for profit, whether by an individual, pass-through entity, corporation or any other entity, including but not limited to the renting or leasing of property, whether real, personal or mixed. "Business" conducted within the Municipality includes the direct or indirect ownership of an interest in a pass-through entity that conducts business within the Municipality.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

## Sec. 311-3-C1. Capital Assets; Capital Gain or Loss.

"Capital asset" has the meaning as specifically defined by Section 1221 of the Internal Revenue Code, and a "capital gain or loss" means the gain or loss from the sale or exchange of a capital asset.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

# Sec. 311-3-C2. Chapter.

"Chapter" means Chapter 311 of the Cincinnati Municipal Code.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

## Sec. 311-3-C3. Corporation.

"Corporation" means a corporation, joint stock association or an S corporation organized under the laws of the United States, the state of Ohio, or any other state, territory or foreign country or dependency. The term "corporation" also includes an entity treated as a corporation for federal income tax purposes, including, but not limited to, publicly traded partnerships, regulated investment companies, real estate investment trusts and partnerships and limited liability companies that elect to be treated as corporations for federal income tax purposes. The term "corporation" also includes a "combined company," an "electric company" and a "telephone company," all as defined in Ohio Revised Code Section 5727.01. Finally, the term "corporation" does not include a limited liability company that is treated as a partnership for federal income tax purposes.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-3-D. Domicile.

"Domicile" means a principal residence that the taxpayer intends to use for an indefinite time and to which whenever he or she is absent he or she intends to return. A taxpayer has only one domicile even though he or she may have more than one residence.

# Sec. 311-3-E1. Employee.

"Employee" means one who works for qualifying wages in the services of an employer.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

### Sec. 311-3-E2. Employer.

"Employer" means:

- (a) An individual, corporation, pass-through entity, governmental body, unit or agency, or any other entity, whether or not organized for profit, who or that employs one or more persons on a qualifying wages basis;
- (b) An individual, pass-through entity, corporation or any other entity who or that promotes, books or contracts for individuals or groups to perform or entertain at their place of business, or rents facilities for the purpose of providing such entertainment.

Solely with respect to persons engaged to provide domestic service at a private residence, the term "employer" does not include any person who employs domestic help for such person's private residence.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-3-F1. Fiscal Year.

"Fiscal year" means an accounting period of 12 months or less ending on any day other than December 31.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

## Sec. 311-3-F2. Form 2106.

"Form 2106" means Internal Revenue Service Form 2106 filed by a taxpayer pursuant to the Internal Revenue Code.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-3-G1. Generic Form.

"Generic form" means an electronic or paper form designated for reporting estimated Municipal income taxes and annual Municipal income tax liability or for filing a refund claim that is not prescribed by the Municipality for the reporting of Municipal income tax on income but that comports with the requirements of Ohio Revised Code section 718.05 and this chapter.

## Sec. 311-3-G2. Gross Receipts.

"Gross receipts" means the total income of taxpayers from whatever source derived.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-3-I1. Intangible Income.

"Intangible income" means income of any of the following types as specified in Ohio Revised Code section 718.01(A)(5): income yield, interest, capital gains, dividends, or other income arising from the ownership, sale, exchange, or other disposition of intangible property including, but not limited to, investments, deposits, money, or credits as those terms are defined in Chapter 5701 of the Ohio Revised Code, and patents, copyrights, trademarks, trade names, investments in real estate investment trusts, investments in regulated investment companies, and appreciation on deferred compensation. "Intangible income" does not include prizes, awards, or other income associated with any lottery winnings or other similar games of chance.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-3-I2. Internal Revenue Code.

"Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat 2085, 26 U.S.C. 1, as amended.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

## Sec. 311-3-I3. Internet.

"Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks, including the graphical subnetwork known as the "world wide web."

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

# Sec. 311-3-J. Joint Economic Development District.

"Joint Economic Development District" means districts created under the Ohio Revised Code section 715.70, as amended, and includes Joint Economic Zones created under Ohio Revised Code section 715.691, as amended.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

# Sec. 311-3-L. Limited Liability Company.

"Limited liability company" means a limited liability company formed under Chapter 1705 of the Ohio Revised Code or under the laws of another state.

### Sec. 311-3-M. Municipality.

"Municipality" means the City of Cincinnati, Ohio.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-3-N1. Net Profit.

"Net profit" for a taxpayer other than an individual means adjusted federal taxable income and "net profit" for a taxpayer who is an individual means the individual's profit, other than amounts described in Section 311-15, required to be reported on Internal Revenue Service schedule C, schedule E or schedule F. "Net profit" shall be determined in accordance with the accounting method used by the taxpayer for federal income tax purposes. In determining "net profit," no deduction shall be allowed for any amount paid or accrued in respect of federal self-employment tax.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

# Sec. 311-3-N2. Nonqualified Deferred Compensation Plan.

"Nonqualified deferred compensation plan" means a compensation plan described in section 3121(v)(2)(C) of the Internal Revenue Code.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

## Sec. 311-3-N3. Nonresident.

"Nonresident" means any individual domiciled outside the Municipality.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-3-N4. Nonresident Owner.

"Nonresident owner" means (i) an individual domiciled outside the Municipality who has a direct or indirect ownership interest in a pass-through entity that conducts business in the Municipality and (ii) a corporation that has a direct or indirect ownership interest in a pass-through entity that conducts business in the Municipality.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

## Sec. 311-3-O1. Ohio Business Gateway.

"Ohio Business Gateway" means the online computer network system, initially created by the Ohio Department of Administrative Services under Ohio Revised Code section 125.30, that allows private businesses to file electronically business reply forms with Ohio agencies, and includes any successor electronic filing and payment system.

## Sec. 311-3-O2. Organization.

"Organization" means a corporation for profit or not for profit, a pass-through entity, estate, trust, or other commercial or legal entity. "Organization" does not include an entity organized as or by a governmental agency for the execution of a government program.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

### Sec. 311-3-O3. Other Payer.

"Other payer" means any person, other than an individual's employer or the employer's agent, who pays an individual any amount included in the gross income of the individual for federal income tax purposes.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

## Sec. 311-3-O4. Owner.

"Owner" means an individual, partner, member or any other person having an ownership interest in a pass-through entity.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

## Sec. 311-3-P1. Pass-through Entity.

"Pass-through entity" means a partnership, limited liability company, or any other class of entity the income or profits from which are given pass-through treatment under the Internal Revenue Code. "Pass-through entity" does not include an S corporation.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-3-P2. Person.

"Person" includes individuals, pass-through entities, business trusts, estates, trusts, corporations, governmental entities, and any other entity. Whenever used in this chapter in any clause prescribing and imposing a penalty, "person," as applied to a pass-through entity, shall mean the owner thereof, and as applied to a corporation, the officers thereof.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-3-P3. Place of Business.

"Place of business" means any bona fide office (other than a mere statutory office), factory, warehouse or other space that is occupied and used by the taxpayer in carrying on any business activity, individually or through one or more of his employees, regularly in attendance.

# Sec. 311-3-P4. Principal Place of Business.

"Principal place of business" means in the case of an employer having headquarters activities at a place of business within a taxing municipality, the place of business at which the headquarters is situated. In the case of any employer not having its headquarters activities at a place of business within the Municipality, the term means the largest place of business located in the Municipality.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-3-Q. Qualifying Wages.

"Qualifying wages" shall have the meaning ascribed thereto in section 718.03(A) of the Ohio Revised Code. "Qualifying wages" shall include any amounts described in Ohio Revised Code section 718.03(A)(2)(c) but shall not include any amounts described in Ohio Revised Code section 718.03(A)(2)(b)(ii).

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-3-R1. Resident.

"Resident" means an individual domiciled in the Municipality.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-3-R2. Resident Owner.

"Resident Owner" means an individual domiciled in the Municipality who has an ownership interest in a pass-through entity.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

## Sec. 311-3-R3. Return Preparer.

"Return preparer" means any person other than a taxpayer who is authorized by a taxpayer to complete or file an income tax return, report, or other document for or on behalf of the taxpayer.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-3-R4. Rules and Regulations.

"Rules and Regulations" means the rules and regulations as set forth in this chapter.

#### Sec. 311-3-S1. Schedule C.

"Schedule C" means Internal Revenue Service schedule C filed by a taxpayer with his federal income tax return.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

# Sec. 311-3-S2. Schedule E.

"Schedule E" means Internal Revenue Service schedule E filed by a taxpayer with his federal income tax return.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-3-S3. Schedule F.

"Schedule F" means Internal Revenue Service schedule F filed by a taxpayer with his federal income tax return.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

# Sec. 311-3-S4. S Corporation.

"S corporation" means a corporation that has made an election under subchapter S of Chapter 1 of Subtitle A of the Internal Revenue Code for its taxable year.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

# Sec. 311-3-T1. Tax Commissioner.

"Tax Commissioner" means the person appointed to administer the Municipality's Income Tax Ordinance and to direct the operation of the Municipal Income Tax Division or the person executing the duties of the Tax Commissioner.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

# Sec. 311-3-T2. Tax Year.

"Tax year" or "taxable year" means (i) the calendar year, or the fiscal year upon the basis of which net profits are to be computed under this chapter and, in the case of a return for a fractional part of a year, the period for which such return is required, and (ii) the corresponding reporting period as prescribed for the taxpayer under the Internal Revenue Code and used by the taxpayer for federal income tax purposes.

#### Sec. 311-3-T3. Taxable Income.

"Taxable income" means qualifying wages, net profits, gambling and lottery winnings and other income specified in this chapter as subject to Municipal income tax.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-3-T4. Taxing Municipality.

"Taxing municipality" means a municipality levying a tax on income earned by nonresidents working within such municipality or on income earned by its residents.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

# **Sec. 311-3-T5. Taxpayer.**

"Taxpayer" means a person, whether an individual, pass-through entity or corporation required by this chapter to file a return or pay tax whether that tax is imposed on the entity itself or the owners of the entity. "Taxpayer" does not include any person that is a disregarded entity or a qualifying subchapter S subsidiary for federal income tax purposes, but "taxpayer" includes any person who owns the disregarded entity or qualifying subchapter S subsidiary.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-3-T6. Trade or Business Asset.

"Trade or business asset" shall mean personal property used in a trade or business of a character that is subject to the allowance for depreciation as provided in Section 167 of the Internal Revenue Code, and real property used in a trade or business.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

# Sec. 311-5. Imposition of Tax.

Subject to the provisions of Section 311-75 of this chapter, an annual tax, for the purposes specified in Section 311-1 hereof, shall be, and is hereby, levied at the rate of 2 percent (2%) per annum upon the following:

- (a) On all qualifying wages, net profits and other taxable income earned or received during the effective period of this chapter by a resident.
- (b) On all qualifying wages earned or received during the effective period of this chapter by a nonresident for work done or services performed or rendered in the Municipality, subject to the limitations provided in Ohio Revised Code section 718.011, and on net profits earned or received during the effective period of this chapter by a nonresident from the operation or conduct of business in the Municipality.

- (1) Where a nonresident is employed at a place of business in the Municipality, the qualifying wages of such nonresident for the performance of employee services will be treated as earned outside the Municipality only for those services which of necessity, as distinguished from convenience, obligate such nonresident to duties outside the Municipality in the service of the nonresident's employer.
- (c) (1) On a resident owner's distributive share of the net profits of a pass-through entity earned from business conducted during the effective period of this chapter, regardless of where such business is conducted.
  - (2) On a nonresident owner's distributive share of the net profits of a pass-through entity earned during the effective period of this chapter from business conducted in the Municipality, whether or not such pass-through entity has an office or place of business in the Municipality.
  - (3) The Municipal income tax imposed on the owners of a pass-through entity shall, to the extent that the owner's distributive share of the net profit of the pass-through entity is attributable to business conducted by the pass-through entity in the Municipality, be collected and remitted pursuant to Section 311-32.
- (d) On a corporation's net profits earned during the effective period of this chapter and derived from business conducted in the Municipality, whether or not such corporation has an office or place of business in the Municipality. The tax imposed by this Section on the net profits of an electric company, combined company or telephone company shall be subject to, and shall accord with, Ohio Revised Code Chapter 5745.
- (e) (1) On all prizes, awards and income derived from gaming, wagering, lotteries or schemes of chance by residents, regardless of where derived, and as reported on IRS Form W-2G, IRS Form 5754 or any other form required by the Internal Revenue Service to report such prizes, awards and income.
  - (2) On all prizes, awards and income derived from gaming, wagering, lotteries or schemes of chance by nonresidents from sources within the Municipality and as reported on IRS Form W-2G, IRS Form 5754 or any other form required by the Internal Revenue Service to report such prizes, awards and income.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04; a. Ord. No. 66-2006, eff. 3-22-2006)

# Sec. 311-7. Apportionment of Net Profits.

Net profits from a business or profession conducted both within and without the boundaries of the Municipality shall be considered as having a taxable situs in the same proportion as the average ratio of:

(a) The average original cost of the real and tangible personal property owned or used by the taxpayer in the business or profession in the Municipality during the taxable period to the average original cost of all of the real and tangible personal property owned or used by the taxpayer in the business or profession during the same period, wherever situated.

As used in the preceding paragraph, real property shall include property rented or leased by the taxpayer and the value of such property shall be determined by multiplying the annual rental thereon by eight.

(b) Wages, salaries, and other taxable income paid during the taxable period to persons employed in the business or profession for services performed in the Municipality to wages, salaries, and other taxable income paid during the same period to persons employed in the business or profession, wherever their services are performed, excluding compensation that is not taxable by the Municipality under Ohio Revised Code section 718.011.

As used in the preceding paragraph, persons employed shall not be construed to mean any subcontractor or independent contractor. All qualifying wages subject to tax under Section 311-5(b) are considered paid for employee services rendered in the Municipality.

- (c) Gross receipts of the business or profession from sales made and services performed during the taxable period in the Municipality to gross receipts of the business or profession during the same period from sales and services, wherever made or performed. A sale of tangible personal property is considered made in the Municipality if the sale satisfies any of the criteria set forth in Ohio Revised Code section 718.02(B). Sales of tangible personal property are therefore considered made in the Municipality when:
  - (1) The tangible personal property is delivered within the Municipality, regardless of where title passes, if such property is shipped or delivered from a stock of goods within the Municipality;
  - (2) The tangible personal property is delivered within the Municipality, regardless of where title passes, even though transported from a point outside the Municipality if the taxpayer is regularly engaged through its own employees in the solicitation or promotion of sales within the Municipality and the sales result from such solicitation or promotion; or
  - (3) The tangible personal property is shipped from a place within the Municipality to purchasers outside the Municipality, regardless of where title passes, if the taxpayer is not, through its own employees, regularly engaged in the solicitation or promotion of sales at the place where delivery is made.

Provided however, that in the event a just and equitable result cannot be obtained under the apportionment formula provided for herein, the tax commissioner shall have the authority to substitute other factors or methods calculated to produce an equitable result.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

# Sec. 311-8. Stock Option Adjustment.

If, in computing the taxpayer's adjusted federal taxable income, the taxpayer deducted any amount with respect to a stock option granted to an employee and if the employee is not required to include in income any amount or any portion thereof because it is exempted from taxation under section 311-15, the taxpayer shall add the amount that is exempt from taxation to the taxpayer's net profit that was apportioned to the Municipality. In no case shall a taxpayer be required to add to its net profit that was apportioned to the Municipality any amount other than the amount upon which the employee would be required to pay tax were the amount related to the stock option not exempted from taxation.

This section applies solely for the purpose of making an adjustment to the amount of a taxpayer's net profit that was apportioned to the Municipality under divisions (A) and (B) of section 311-7.

## Sec. 311-9. Net Operating Loss (NOL).

A net operating loss sustained in any taxable year that is apportioned to the Municipality may be applied against the net profit of succeeding tax years that is apportioned to the Municipality, until exhausted, but in no event for more than the five (5) taxable years immediately following the year in which the loss occurred. No portion of a net operating loss shall be carried back against net profits of any prior year, and no portion of a net operating loss may offset qualifying wages.

A net operating loss sustained shall be apportioned to the Municipality in the same manner as provided herein for apportioning net profits to the Municipality.

The tax commissioner shall provide by rules and regulations the manner in which such net operating loss carry forward shall be determined.

The net operating loss of a taxpayer that loses its legal identity, by any means such as merger or consolidation, shall not be allowed as a carryforward loss deduction to the surviving or new taxpayer.

If a taxpayer who is an individual is engaged in two or more taxable business activities to be included in the same return, the net loss apportioned to the Municipality of one unincorporated business activity may offset the profits apportioned to the Municipality of another unincorporated taxable business for purposes of arriving at the overall net profits of the taxpayer that are subject to Municipal income tax. (Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-11. Consolidated Returns.

- (a) A consolidated return may be filed by an affiliated group of corporations subject to the tax imposed by this chapter if that affiliated group filed for the same taxable year a consolidated return for federal income tax purposes pursuant to Section 1501 of the Internal Revenue Code. Only corporations subject to the tax imposed by this chapter may be included in such consolidated return filed for Municipal income tax purposes. If an affiliated group of corporations subject to the tax imposed by this chapter properly files a consolidated return in accordance with this Section 311-11(a), the affiliated group must file a consolidated return that includes those corporations in the group that are subject to Municipal income tax for each succeeding taxable year in which the group files a consolidated return for federal income tax purposes unless, on or before the due date (taking into account extensions of time properly granted) of the return for a taxable year, the affiliated group obtains the permission of the tax commissioner to cease filing a consolidated return for that year.
- (b) In the case of a corporation that carried on transactions with its stockholders or with other corporations related by stock ownership, interlocking directorates or some other method, or in case any person operates a division, branch, factory, office, laboratory or activity within the Municipality constituting only a portion of its total business, the tax commissioner shall require such additional information as the tax commissioner deems necessary to ascertain whether net profits are properly allocated to the Municipality. If the tax commissioner finds the net profits are not properly allocated to the Municipality by reason of transactions with stockholders or with other corporations related by stock ownership, interlocking directorates or transactions with a division, branch, factory, office, laboratory or activity, or by some other method, the tax commissioner shall make such adjustments to, and allocation of, net profits to fairly and reasonably reflect the proper allocation of net profits to the Municipality.

## Sec. 311-15. Exception to the Tax.

The tax provided for herein shall not be levied upon the following:

- (a) (1) Proceeds from welfare benefits, unemployment insurance benefits, pensions, social security benefits, and qualified retirement plans as defined by the Internal Revenue Service, except to the extent that such amounts are included in the definition of qualifying wages provided in this chapter.
  - (2) Proceeds of insurance, annuities, workers' compensation insurance, permanent disability benefits, compensation for damages for personal injury and like reimbursements, not including damages for loss of profits and wages, except to the extent that such amounts are included in the definition of qualifying wages provided in this chapter.
  - (3) Dues, contributions and similar payments, received by charitable, religious, educational organizations, or labor unions, trade or professional associations, lodges and similar organizations.
  - (4) Gains from involuntary conversion, cancellation of indebtedness, interest on federal obligations and income of a decedent's estate during the period of administration (except such income from the operation of a business).
  - (5) Alimony.
  - (6) Compensation for damage to property by way of insurance or otherwise.
  - (7) Intangible income.
  - (8) Military pay or allowances of members of the Armed Forces of the United States and of members of their reserve components, including the Ohio National Guard.
  - (9) Income of any charitable, educational, fraternal or other type of nonprofit association or organization enumerated in Ohio Revised Code section 718.01 to the extent that such income is derived from tax-exempt real estate, tax-exempt tangible or intangible property, or tax-exempt activities.
  - (10) Any association or organization falling in the category listed in the preceding paragraph receiving income from non-exempt real estate, tangible or intangible personal property, or business activities of a type ordinarily conducted for profit by taxpayers operating for profit shall not be excluded from the tax imposed under this chapter on such income.
  - (11) In the event any association or organization receives taxable income as provided in the preceding paragraph from real or personal property ownership or an income producing business located both within and without the corporate limits of the Municipality, it shall calculate its income apportioned to the Municipality under the method provided in Section 311-7.
  - (12) If exempt for federal income tax purposes, fellowship and scholarship grants are excluded from municipal income tax.
  - (13) The rental value of a home furnished to a minister of the gospel as part of his or her compensation, or the rental allowance paid to a minister of the gospel as part of his or her compensation, to the extent used to rent or provide a home pursuant to section 107 of the Internal Revenue Code.

- (14) Compensation paid under sections 3501.28 or 3501.36 of the Ohio Revised Code to a person serving as a precinct official, to the extent that such compensation does not exceed one thousand dollars (\$1,000) annually. Such compensation in excess of one thousand dollars may be subjected to taxation. The payer of such compensation is not required to withhold Municipal income tax from that compensation.
- (15) Compensation paid to an employee of a transit authority, regional transit authority, or a regional transit commission created under Chapter 306 of the Ohio Revised Code for operating a transit bus or other motor vehicle for the authority or commission in or through the Municipality, unless the bus or vehicle is operated on a regularly scheduled route, the operator is subject to Municipal income tax by reason of residence or domicile in the Municipality, or the headquarters of the authority or commission is located within the Municipality.
- (16) The Municipality shall not tax the compensation paid to a nonresident individual for personal services performed by the individual in the Municipality on twelve (12) or fewer days in a calendar year unless one of the following applies:
  - a. The individual is an employee of another person, the principal place of business of the individual's employer is located in another municipality in Ohio that imposes a tax applying to compensation paid to the individual for services performed on those days; and the individual is not liable to that other municipality for tax on the compensation paid for such services; or
  - b. The individual is a professional entertainer or professional athlete, the promoter of a professional entertainment or sports event, or an employee of such a promoter, all as may be reasonably defined by the Municipality.
- (17) The income of a public utility, when that public utility is subject to the tax levied under sections 5727.24 or 5727.30 of the Ohio Revised Code, except the Municipality taxes the following, subject to Chapter 5745 of the Ohio Revised Code:
  - a. The income of an electric company or combined company; and
  - b. The income of a telephone company.
  - "Combined company," "electric company," and "telephone company" have the same meanings as in section 5727.01 of the Ohio Revised Code.
- (18) An S corporation shareholder's distributive share of net profits or losses of the S corporation, other than any part of the distributive share of net profits that represents wages as defined in section 3121(a) of the Internal Revenue Code or net earnings from self-employment as defined in section 1402(a) of the Internal Revenue Code.
- (19) Any compensation arising from the grant, sale, exchange, or other disposition of a stock option, the exercise of a stock option, or the sale, exchange, or other disposition of stock purchased under a stock option.
- (b) Generally the above noted items in this Section 311-15 are the only forms of income not subject to the tax imposed by this Chapter. Any other income, benefits, or other forms of compensation shall be taxable.

## Sec. 311-16. Deductions for Employed Persons Receiving Salaries and Wages.

An employee who receives qualifying wages and who pays business expenses without reimbursement from his or her employer shall be entitled to a deduction to the same extent allowed for federal income tax purposes, or which would otherwise be allowed except for the fact that the taxpayer has used the standard deduction when filing his or her federal income tax return, but only to the extent such expenses are considered ordinary, necessary and reasonable and are incurred in earning the specific qualifying wages, subject to the tax imposed by this chapter from which the deduction is made. In no case shall the total of such deductions exceed the employee's qualifying wages from his or her employer.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-17. Effective Period.

The tax imposed by Section 311-5 shall be levied, collected and paid with respect to all taxable income that is subject to the tax and that is earned or received on or after April 1, 1973.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

# Sec. 311-18. Effective Period of Infrastructure Levy.

- (a) The tax imposed by Section 311-2 shall be levied, collected and paid with respect to all taxable income subject to the tax, earned or received on or after July 1, 1988.
- (b) Said tax shall terminate and shall not be levied on or after July 1 of any year subsequent to 1992 in which the Municipality's Annual Financial Reports show that:
  - (1) For any calendar year subsequent to 1989 less than ninety percent (90%) of the lesser of:
    - i. the base amount for such year; or
    - ii. the amount appropriated in such year for infrastructure purposes specified in Section 311-2 from all city funds except Metropolitan Sewer District Fund No. 701, Water Works Fund No. 101, Parking Systems Facilities Fund No. 102, Riverfront Stadium Fund No. 106, Stormwater Management Fund No. 107, Convention-Exposition Center Fund No. 103, and Lunken Airport Fund No. 104 (which seven funds may be jointly referred to herein as the "Enumerated Funds") was expended for such infrastructure purposes by the end of the second calendar year following the subject calendar year;
  - (2) In 1990, 1991, 1992, 1993 and 1994 the amount appropriated in any calendar year for infrastructure purposes in Section 311-2 from all city funds except the Enumerated Funds was less than the base amount for such calendar year; or
  - (3) In any calendar year subsequent to 1994 both of the following conditions occur:
    - i. In such calendar year the total amount appropriated for infrastructure purposes specified in Section 311-2 from all Municipal funds except the Enumerated Funds was less than the base amount for such calendar year; and

- ii. In such year and the two preceding calendar years the total amount appropriated for infrastructure purposes specified in Section 311-2 from all Municipal funds except the Enumerated Funds was less than an amount which is the result of multiplying the total amount of all appropriations in such three-year period for any purposes from all city funds except the Enumerated Funds times the 1994 Ratio. The "1994 Ratio" as used herein means the ratio of the base amount for 1994 to the amount of all appropriations in 1994 for any purposes from all Municipal funds except the Enumerated Funds.
- (c) As used in this section the "base amount" shall be determined by application of the Annual Calculation set forth in paragraph (c)(1) or as otherwise specifically stated below:

#### (1) Annual Calculation:

The base amount for each year shall be the lesser of the following two calculated amounts:

- i. The base amount for the previous year adjusted upward or downward by an amount obtained by multiplying such previous year's base amount by the percentage change in the Implicit Price Deflator for Gross Domestic Product in the second calendar year preceding the calendar year for which the base amount is being calculated, as compared with the third calendar year preceding such year (for example, in calculating the base amount for 1991, the multiplier shall be the percentage change from 1988 to 1989); or
- ii. The base amount for the previous year adjusted upward or downward by an amount obtained by multiplying such previous year's base amount by the preceding change in the General Fund revenues of the Municipality in the second calendar year preceding the year for which the base amount is being calculated, as compared with the third calendar year preceding such year.

The Implicit Price Deflator for Gross Domestic Product is determined by the U.S. Department of Commerce, Bureau of Economic Analysis and is reported in the publication ECONOMIC INDICATORS prepared for the Joint Economic Committee by the Council of Economic Advisors.

- (2) For the year 1990, the base amount shall be \$42 million.
- (3) For the years 1991, 1992 and 1993 the base amount shall be calculated as set forth in the Annual Calculation specified in paragraph (c) (1).
- (4) For the year 1994, the base amount shall be calculated as follows: The base amount for 1987 shall be \$42 million. Solely for the purposes of determining the base amount for 1994, a recalculated base amount shall be calculated for 1988, 1989, 1990, 1991, 1992, and 1993 by applying the Annual Calculation specified in paragraph (c) (1) above, to the recalculated base amounts commencing with the 1987 base amount. For the year 1994 the base amount shall be determined by applying the Annual Calculation specified in paragraph (c) (1), above, to the base amount for the previous year.
- (5) For the year 1995 and thereafter, the base amount for each year shall be determined by applying the Annual Calculation specified in paragraph (c) (1), above, to the base amount for the previous year.

## Sec. 311-19. Returns Must Be Filed; Time of Filing.

Each person who engages in business or other activity in the Municipality, or whose taxable income is subject to the tax imposed by this chapter, shall, whether or not a tax be due thereon, make and file a return with the tax commissioner on or before April 15 in each year following the effective date of this chapter, and on or before April 15 of each year thereafter. When the return is made for a fiscal year or other period different from the calendar year, the return shall be filed on or before the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) month following the end of such fiscal year or period.

The tax commissioner is hereby authorized to provide by regulation that the return of an employer or employers showing the amount of Municipal income tax deducted by said employer or employers from the qualifying wages of an employee and paid by the employer or employers to the tax commissioner shall be accepted as the return required of any employee whose sole income subject to tax under this chapter is such qualifying wages.

Likewise, the tax commissioner is hereby authorized to provide by regulation that the Municipal income withholding tax return described in Section 311-32 of a pass-through entity that conducts business in the Municipality, showing the amount of Municipal income tax withheld and remitted to the tax commissioner by said pass-through entity in respect of an owner's distributive share of the pass-through entity's net profit attributable to the Municipality, shall be accepted as the Municipal income tax return required of such owner whose sole income subject to tax under this chapter is such distributive share. Where an owner has as his sole sources of income subject to tax under this chapter both qualifying wages described in this Section 311-19 and the distributive share of net profit described in this Section 311-19, the tax commissioner is hereby authorized to accept as the Municipal income tax return required of such owner the Municipal income tax returns described in this Section 311-19 of the employer and the pass-through entity.

A husband and wife may file either separate returns or a joint return for Municipal income tax purposes, even though one of the spouses has neither taxable income nor deductions included on the Municipal income tax return, regardless of whether their federal and state returns were filed separately or jointly. If a joint Municipal income tax return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

## Sec. 311-21. Forms for Filing.

The Municipal income tax return shall be filed with the tax commissioner on a form or forms available to the public through the Internet or furnished by or obtainable upon request from the tax commissioner or on a generic form, if the generic form contains all information required to be submitted with the prescribed Municipal income tax return and if the taxpayer or return preparer filing the generic form otherwise complies with the requirements of this chapter governing the filing of returns. Such required information includes: taxpayer identification number; specification of Municipal income tax year involved; and if a federal form is used, a statement that indicates the Municipal income tax purpose for which the federal form is intended as a substitute, such as power of attorney, extension of time in which to file, and the like. The Municipal income tax return shall set forth:

(a) The aggregate amounts of qualifying wages and other taxable income earned or received during the preceding year and subject to Municipal income tax, and gross income from any business, less allowable expenses incurred in the acquisition of such gross income, earned during the preceding year and subject to said tax:

- (b) The amount of the tax imposed by this chapter on such taxable income; and
- (c) Such other pertinent statements, information returns, copies of federal or state tax returns or schedules, or other information as the tax commissioner may require, including a statement that the figures used in the Municipal income tax return are the figures used in the return for federal income tax, adjusted to set forth only such income as is taxable under the provisions of this chapter.

As provided in Ohio Revised Code section 718.051, for taxable years beginning on or after January 1, 2005, a business the net profits of which are subject to tax under this chapter may file its Municipal income tax return by using the Ohio business gateway.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-23. Extension of Time for Filing.

A request for extension for filing the Municipal income tax return shall be filed no later than the original due date for filing such return, as set forth in Section 311-19. The extended due date of the Municipal income tax return shall be the last day of the month following the month to which the due date of the federal income tax return has been extended. The taxpayer shall make the request by filing either a copy of the taxpayer's request for a federal filing extension or a written request with the tax commissioner.

The Municipality may deny a taxpayer's request for extension if the taxpayer:

- (a) fails to timely file a request, including the failure to file a copy of the federal extension request, if applicable;
- (b) owes the Municipality any delinquent income tax or any penalty, interest, assessment or other charge for the late payment or nonpayment of Municipal income tax; or
- (c) has failed to file any required Municipal income tax return, report, or other related document for a prior tax year.

Notwithstanding the foregoing, on and after January 1, 2005, any taxpayer that is subject to Municipal income tax on the taxpayer's net profit and that has received an extension to file the federal income tax return for the same tax year shall not be required to notify the Municipality of the federal extension and shall not be required to file the Municipal income tax return for such tax year until the last day of the month to which the due date for filing the federal income tax return has been extended; provided that, on or before the due date specified in Section 311-19 for filing the Municipal income tax return, the taxpayer notifies the Ohio tax commissioner of the federal extension through the Ohio business gateway.

The granting of an extension for the filing of a Municipal income tax return does not extend the last date for payment of the tax; hence, interest may apply to any unpaid tax during the period of the extension at the rate set forth in Section 311-63. No penalty shall be assessed in those cases where the return is filed and the final tax paid within the extension period, provided all other filing and payment requirements have been fulfilled; however, if upon further examination, it becomes evident that declaration, filing or payment requirements have not been fulfilled, penalty and interest may be assessed in full in the same manner as though no extension for the filing of the Municipal income tax return had been granted.

In the event the United States of America, the State of Ohio, Hamilton County or the Municipality has declared any part of the Municipality a disaster area, the tax commissioner may extend the time for filing of

the annual return for a period not to exceed six months for persons who have suffered injury or loss from the disaster. The city manager or city manager's designee shall establish guidelines for determining eligibility for and implementation of such extension. In the event an extension is granted, both penalty and interest shall be waived during the time of the extension.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-25. Payment with Return.

The taxpayer making a Municipal income tax return shall, at the time of filing thereof, pay to the tax commissioner the amounts of taxes shown as due thereon; provided, however, that where any portion of the tax so due shall have been deducted at the source, pursuant to the provisions of Sections 311-31 through 311-39, or where any portion of said tax shall have been paid by the taxpayer, pursuant to the provisions of Sections 311-41 and 311-49, or where an income tax, creditable against Municipal income tax pursuant to Section 311-73, has been paid to another municipality or Joint Economic Development District, credit for the amount so paid shall be deducted from the amount of Municipal income tax shown to be due and only the balance, if any, shall be due and payable at the time of filing said return. As provided in Ohio Revised Code section 718.051, for taxable years beginning on or after January 1, 2005, a business the net profits of which are subject to tax under this chapter may pay its Municipal income tax by using the Ohio business gateway.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

## Sec. 311-27. Overpayments; Refunds.

A taxpayer who has overpaid the amount of tax to which the Municipality is entitled under the provisions of this chapter may have such overpayment applied against any subsequent liability hereunder. In such case, the overpayment is considered to be an estimated tax payment made as of the date on which the overpayment arose. The taxpayer also has the option to elect as provided on the Municipal income tax return to have any overpayment of five dollars (\$5) or more refunded. When a taxpayer's return indicates that a refund of more than five dollars (\$5) is due and a refund is not issued within 90 days after the tax commissioner has received proper verification and substantiation as to the validity of the refund claim, interest shall be paid at the rate prescribed by section 5703.47 of the Ohio Revised Code.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

# Sec. 311-29. Amended Returns; Effect of Federal Tax Determination.

Where necessary an amended return must be filed in order to report additional taxable income and pay any additional Municipal income tax due, or claim a refund of Municipal income tax overpaid, subject to the requirements and limitations contained in Sections 311-65 and 311-73. Such amended returns shall be on a form obtainable on request from the tax commissioner.

Within three months from the final determination of any federal tax liability affecting the taxpayer's Municipal income tax liability, such taxpayer shall make and file an amended Municipal income tax return showing taxable income subject to Municipal income tax based upon such final determination of federal tax liability, and such taxpayer shall pay any additional tax shown due thereon or make claim for refund of any overpayment.

## Sec. 311-31. Collection at Source; Withholding.

Each employer within, or doing business within, the Municipality who employs one or more persons on a qualifying wages basis shall deduct from the qualifying wages when such qualifying wages are paid, allocated or set aside the tax of 2.1 percent (2.1%) owed by such employee(s) on the qualifying wages and shall make a return and pay to the tax commissioner the amount of taxes so deducted according to the following payment schedule:

- (a) Monthly payments of Municipal income taxes withheld shall be made by an employer if the taxes deducted in the prior calendar year were more than \$3,600 or if such deductions otherwise normally exceed \$300 per month. Such payments shall be made to the Municipality within 15 days after the close of each calendar month.
- (b) All employers not required to make monthly payments of Municipal income taxes withheld shall make quarterly payments no later than the last day of the month following each calendar quarter.
- (c) Such return of withheld Municipal income taxes shall be on a form or forms prescribed by or acceptable to the tax commissioner and shall be subject to the rules and regulations prescribed therefore by the tax commissioner. An employer may report the amount of Municipal income tax withheld from qualifying wages paid on or after January 1, 2007, and may remit such amounts, by using the Ohio business gateway.
- (d) Employers who are required by 26 USC 6302 and 26 CFR 31.6302-1, or other federal statutes or regulations, to deposit payments electronically for the purpose of paying federal taxes withheld on payments to employees shall make payment by electronic funds transfer to the tax commissioner of the Municipal income taxes withheld on qualifying wages. Except as otherwise provided in this paragraph, the payment of taxes by electronic funds transfer does not affect an employer's obligation to file the returns as required under this Section 311-31.
- (e) The tax commissioner shall adopt rules governing the remittance of withheld Municipal income taxes by electronic funds transfer as required by this chapter. The tax commissioner may grant an exemption to an employer from the duty to make payment by electronic funds transfer upon application for such exemption by the employer and the employer's demonstration to the tax commissioner that the requirement to make payment by electronic funds transfer will impose a hardship upon the employer. The tax commissioner may implement means of acknowledging, upon request of a taxpayer, receipt of electronic tax remittances. The person requesting acknowledgement shall pay the cost of acknowledging receipt of electronic remittances.
- (f) An employee is not relieved from liability for Municipal income tax by the failure of the employer to withhold the tax as required by this Section 311-31 or by the employer's exemption from the requirement to withhold Municipal income tax.
  - The failure of an employer to remit to the Municipality the Municipal income tax withheld relieves the employee from liability for that tax unless the employee colluded with the employer in connection with the failure to remit the tax withheld.
- (g) Any person who shall employ or contract for the services of any professional entertainer(s) or professional athlete(s) to be performed in the Municipality or any person who, acting as a promoter, booking agent or employer, engages the services of or arranges the appearance of any professional entertainer(s) or professional athlete(s) in the Municipality and who makes any payment arising from

said appearance in the Municipality shall be deemed to be an employer and shall, for purposes of the collection of Municipal income tax, be required to withhold, report and remit as required under this Section 311-31 Municipal income tax on the gross amount so paid to the professional entertainer(s) or professional athlete(s) for services performed in the Municipality.

Any person who rents facilities located in the Municipality that are made available to any professional entertainer(s) or professional athlete(s) for use in performing services in the Municipality and who makes any payment arising from said use of facilities shall be deemed to be an employer and shall, for purposes of the collection of Municipal income tax, be required to withhold, report and remit as required under this Section 311-31 Municipal income tax on the gross amount so paid to the professional entertainer(s) or professional athlete(s) for services performed in the Municipality.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

## Sec. 311-32. Pass-through Entity Withholding.

Except as otherwise provided in this Section 311-32, a pass-through entity that conducts business within the Municipality must: (i) withhold Municipal income tax at the rate specified in Section 311-5 on each owner's distributive share of the pass-though entity's net profits attributable to the Municipality; and (ii) remit such tax to the tax commissioner by the applicable dates provided in Section 311-45. A pass-through entity subject to this Section 311-32 shall use the form described in Section 311-43 to return and remit Municipal income tax withheld pursuant to this Section 311-32. Such pass-through entity shall be subject to Section 311-51 to return (on the form specified in Section 311-21) and remit any withheld Municipal income tax that remains outstanding as of the date specified in Section 311-51. A pass-through entity subject to this Section 311-32 that fails to collect or remit Municipal income tax as provided in this Section 311-32 shall be liable for the tax that it should have withheld or remitted and shall be subject to the interest and penalty provisions of Sections 311-63 and 311-99. The resident and nonresident owners shall receive a credit against their Municipal income tax liabilities in the amount of the Municipal income tax so withheld by the pass-through entity on their respective distributive shares of the pass-through entity's net profit. All claims for refund of Municipal income tax withheld by a pass-through entity pursuant to this Section 311-32 must be made by the owner within the period set forth in Section 311-67. A pass-through entity is not required to withhold and remit Municipal income tax to the extent that its owners both: (i) file Municipal income tax returns and declarations as provided in Sections 311-19 and 311-45, respectively, that report their distributive shares of the pass-through entity's net profits attributable to the Municipality; and (ii) pay Municipal income tax thereon.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

## Sec. 311-33. Employer Considered as Trustee.

Each employer in collecting Municipal income tax owed on qualifying wages shall be deemed to hold the same, until payment is made by such employer to the Municipality, as a trustee for the benefit of the Municipality, and any such tax collected by such employer from its employees shall, until the same is paid to the Municipality, be deemed a trust fund in the hands of such employer. Each employer shall be liable for the payment of the tax required to be deducted and withheld, whether or not such tax, in fact, has been withheld.

## Sec. 311-35. Responsibility for Withholding.

Any person who is required to withhold Municipal income tax from qualifying wages and an owner's distributive share of net profit shall pay all such tax to the Municipality in accordance with the provisions of Section 311-31. In the event taxes withheld from the qualifying wages of employees or an owner's distributive share of net profit are not paid to the Municipality in accordance with the provisions of Section 311-31, all officers, members, managers, employees, and trustees having control or supervision of or charged with the responsibility of filing the return of withheld Municipal income tax and making payment of such tax are jointly and severally personally liable for the tax not returned or paid to the Municipality, as well as any related interest and penalties, and are also liable under the provisions of Section 311-99. The dissolution, termination, or bankruptcy of a corporation, pass-through entity, not-for-profit entity or business trust does not discharge an officer's, member's, manager's, employee's, or trustee's liability for a failure of a corporation, pass-through entity, not-for-profit entity or business trust to file returns or pay said taxes.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

# Sec. 311-37. Withholding Return; List of Employees.

Each employer shall file a withholding tax reconciliation showing the sum total of all qualifying wages paid all employees, the portion of which, (if any) was not subject to withholding along with an explanation for same, and the portion of which was subject to withholding, together with the amount of such withholdings remitted. Such return shall include information concerning each employee from whom the Municipal income tax was withheld, showing the name, address, zip code and social security number of each such employee, the total amount of qualifying wages paid during the year and the amount of Municipal income tax withheld. If the total tax withheld from any employee included tax withheld and remitted to another municipality, the amount of same shall be separately shown on the return of information to the Municipality concerning each employee. The withholding tax reconciliation shall be filed by each employer on or before February 28 following the end of the calendar year in which such qualifying wages were paid.

Employers who are required to submit IRS Form W-2 information electronically for federal tax purposes shall submit the information required by the Municipality in electronic format. Except as otherwise provided in this paragraph, the submission of required information in an electronic format does not affect an employer's obligation to file the returns as required under this section.

The tax commissioner shall adopt rules governing the submission of the information required by this section. The tax commissioner may grant an exemption to an employer from the duty to submit the required information electronically upon application for such exemption by the employer and the employer's demonstration to the tax commissioner that the requirement to submit such information will impose a substantial hardship upon the employer.

In addition to the wage reporting requirements of this section, any business required by the Internal Revenue Service to report on Form 1099-MISC payments to individuals not treated as employees for services performed shall also report such payments to the tax commissioner when the services were performed in the Municipality. The information may be submitted on a listing that shall include the individual's name, address, social security number (or federal identification number), and the amount of the payments made. Federal form(s) 1099 may be submitted in lieu of such listing. The information shall be filed annually on or before February 28 following the end of the calendar year in which such payments are made.

## Sec. 311-39. Domestic Servants Exempted from Withholding.

No person shall be required to withhold the tax on the qualifying wages or other taxable income paid domestic servants employed exclusively in or about such person's residence. However, such domestic servants shall be responsible for filing Municipal income tax returns and paying Municipal income tax due on their qualifying wages.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-41. Declarations Required; Time for Filing.

Every person who anticipates any taxable income which is not subject to Section 311-31 hereof, or who engages in any business or activity, shall file a declaration setting forth such estimated income or the estimated profit or loss from such business activity together with the estimated Municipal income tax due thereon, if any. Provided, however, if a person's income is wholly from qualifying wages from which the tax will be withheld and remitted to the Municipality in accordance with Section 311-31 and/or the distributive share of net profit from which the tax will be withheld and remitted to the Municipality in accordance with Section 311-32, such person need not file a declaration.

Such declaration shall be filed on or before April 15 of each year during the life of this chapter, or on or before the fifteenth (15<sup>th</sup>) day of the fourth (4<sup>th</sup>) month following the date the taxpayer first becomes subject to the provisions of this section.

Those taxpayers reporting on a fiscal year basis or period differing from the calendar year shall file a declaration on or before the fifteenth (15<sup>th</sup>) day of the fourth month following the start of each fiscal year or period.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-43. Forms for Declarations; Credit for Withholding.

Such declaration shall be filed upon a form furnished by or obtainable from the tax commissioner or a generic form, and credit shall be taken for the Municipal income tax to be withheld from any portion of such income. In accordance with the provisions of section 311-73, credit may be taken for tax to be withheld and remitted to another taxing municipality or Joint Economic Development District. As provided in Ohio Revised Code Section 718.051, for taxable years beginning on or after January 1, 2005, a business the net profits of which are subject to Municipal income tax may file its declaration, and may make the payments required by Section 311-45, by using the Ohio Business Gateway.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-45. Payment with Declaration.

For tax years prior to 2005, taxpayers who are individuals are required to submit a declaration of the estimated income tax to be paid the Municipality accompanied by a payment of at least seventeen and one-half percent (17.5%) of the estimated annual tax, less credit for taxes withheld or paid to another

municipality or Joint Economic Development District. At least a similar amount shall be paid on or before the last day of the seventh (7<sup>th</sup>), tenth (10<sup>th</sup>), and thirteenth (13<sup>th</sup>) months after the beginning of the tax year.

For taxpayers that are not individuals, such declaration of estimated income tax to be paid the Municipality shall be accompanied by a payment of at least seventeen and one-half percent (17.5%) of the estimated annual tax. At least a similar amount shall be paid on or before the fifteenth (15<sup>th</sup>) day of the sixth (6<sup>th</sup>), ninth (9<sup>th</sup>) and twelfth (12<sup>th</sup>) months after the beginning of the taxable year.

For tax years beginning in 2005 or thereafter, taxpayers who are individuals are required to submit a declaration of the estimated income tax to be paid the Municipality accompanied by a payment of at least twenty-two and one-half percent (22.5%) of the estimated annual tax, less credit for taxes withheld or paid to another municipality or Joint Economic Development District. At least a similar amount shall be paid on or before the last day of the seventh (7<sup>th</sup>), tenth (10<sup>th</sup>), and thirteenth (13<sup>th</sup>) months after the beginning of the tax year.

For taxpayers that are not individuals, such declaration of estimated income tax to be paid the Municipality shall be accompanied by a payment of at least twenty-two and one-half percent (22.5%) of the estimated annual tax. At least a similar amount shall be paid on or before the fifteenth (15<sup>th</sup>) day of the sixth (6<sup>th</sup>), ninth (9<sup>th</sup>) and twelfth (12<sup>th</sup>) months after the beginning of the taxable year.

The mere submission of a declaration estimating a Municipal income tax liability shall not constitute a filing of the required declaration unless accompanied by the required payment.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-47. Amended Declarations Permitted.

A declaration may be amended at any time, provided, however, that in case an amended declaration is filed, the unpaid balance of Municipal income tax shown due thereon shall be paid in equal installments on or before the remaining payment dates set forth in Section 311-45.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

# Sec. 311-49. Estimated Taxes.

A taxpayer shall have the option of determining its estimated Municipal income tax on either of the following methods:

- (a) By basing the estimate on the preceding full year's Municipal income tax liability, or by annualizing such tax liability if the preceding tax year was not for a full 12-month period. In such case, if each installment is paid on that basis, no interest or penalty shall apply for any under estimate of Municipal income tax for the tax year, regardless of the actual Municipal income tax liability for such year, except in the case where the annual return required by Section 311-19 and the payment required with that return by Section 311-25 have not been submitted by the due dates for such annual return and the payment of Municipal income tax due.
- (b) For tax years prior to 2005, by basing the estimate on the taxable income earned or received during the three-month period preceding the due date for the declaration described in Section 311-41, annualized for the remainder of the tax year, and updating this estimate by amendment as necessary each succeeding

three-month period so that at least 70 percent of the annual Municipal income tax liability to be ultimately determined shall have been paid by estimate within one month following the close of the tax year. Failure to have paid at least 70 percent of the ultimate Municipal income tax liability by estimate in the fashion so described shall subject the taxpayer to interest and penalties as set forth in Section 311-63 on the portion of estimated Municipal income tax due and not 70 percent paid by the installment due date.

For tax years beginning in 2005 or thereafter, by basing the estimate on the taxable income earned or received during the three-month period preceding the due date for the declaration described in Section 311-41, annualized for the remainder of the tax year, and updating this estimate by amendment as necessary each succeeding three-month period so that at least 90 percent of the annual Municipal income tax liability to be ultimately determined shall have been paid by estimate within one month following the close of the tax year. Failure to have paid at least 90 percent of the ultimate Municipal income tax liability by estimate in the fashion so described shall subject the taxpayer to interest and penalties as set forth in Section 311-63 on the portion of estimated Municipal income tax due and not 90 percent paid by the installment due date.

Except as otherwise provided in this Section 311-41, the interest and penalty provisions of Section 311-63 apply to the late payment, nonpayment or underpayment of estimated Municipal income tax. However, the interest and penalty provisions of Section 311-63 shall not apply where either: (i) the taxpayer is a resident but was not domiciled in the Municipality on January 1 of the taxable year for which estimated payments of Municipal income tax have been made; or (ii) the taxpayer has remitted on a timely basis an amount of estimated Municipal income tax at least equal to one hundred percent (100%) of the taxpayer's Municipal income tax liability for the preceding taxable year, provided that the return for the preceding taxable year reflected a 12-month period and the taxpayer filed a Municipal income tax return for the preceding taxable year.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

### Sec. 311-51. Annual Return Required.

On or before the fifteenth day of the fourth month of the calendar or fiscal year following that for which the declaration was filed, an annual Municipal income return shall be filed and any balance of Municipal income tax due shall be paid therewith in accordance with the provisions of Section 311-19.

The filing of a declaration does not relieve the taxpayer of the necessity of filing an annual return, even if there is no change in the declared tax liability. An annual return must be filed to obtain a refund of any overpayment of over five dollars (\$5).

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

### Sec. 311-53. Duties of Tax Commissioner; Collection; Enforcement; Tax Determination; Compromise.

It shall be the duty of the tax commissioner to collect and receive the tax imposed by this chapter in the manner prescribed herein, and to keep an accurate record thereof, and to report all monies received.

It shall be the duty of the tax commissioner to enforce payment of income taxes owing the Municipality, to keep accurate records, for a minimum of five years, showing the amount due from each taxpayer required to file a declaration or make any return, including a return of taxes withheld, and to show the dates and amounts of payments thereof. As provided in Ohio Revised Code section 718.01(A)(1), nothing in Ohio Revised

Code chapter 718 shall be construed as limiting or removing the ability of the Municipality to administer, audit and enforce the provisions of this chapter.

The tax commissioner is hereby charged with the enforcement of the provisions of this chapter, and is hereby empowered, subject to the approval of the city manager, to adopt and promulgate and to enforce rules and regulations authorized or required by this chapter relating to any matter or thing pertaining to the collection and payments of taxes and the administration and enforcement of the provisions of this chapter, including provisions for the re-examination and correction of returns.

Not less than ten days before the approval by the city manager of any rule or regulation recommended for adoption and promulgation by the tax commissioner, a public hearing shall be held by the city manager or one designated by the city manager. Notice of the time and place of the public hearing and the text of the proposed rule or regulation shall be published in the Municipal Bulletin for two consecutive weeks within the thirty-day period immediately preceding the public hearing. The city manager, after having conducted or reviewed the substance of the public hearing, shall approve, disapprove or modify the proposed rule or regulation. The rule or regulation shall be promulgated by publication in the City Bulletin within thirty days after its approval by the city manager.

In any case where a taxpayer has failed to file a return or has filed a return that does not show the proper amount of Municipal income tax due, the tax commissioner may determine the amount of tax appearing to be due the Municipality from the taxpayer and may send to such taxpayer a written statement showing the amount of tax so determined, together with interest and penalties thereon, if any.

Subject to the consent of the board of review or pursuant to regulation approved by the city manager, the tax commissioner shall have the power to compromise any liability imposed by this chapter. Rules and regulations adopted by the tax commissioner and approved by the city manager prior to the effective date of any amendment of this chapter shall remain in full force and effect, unless modified in the manner set forth in this section, to the extent that such rules and regulations do not conflict with this chapter, as amended.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

## Sec. 311-55. Investigative Powers of Tax Commissioner.

The tax commissioner, or any authorized agent of the tax commissioner, is hereby authorized to examine the books, papers, records and federal income tax returns of any employer or taxpayer or any person subject to, or whom the tax commissioner believes is subject to, the provisions of this chapter, for the purpose of verifying the accuracy of any return made, or, if no return was made, to ascertain the tax or withholdings due under this chapter. Every such employer, supposed employer, taxpayer or supposed taxpayer is hereby directed and required to furnish, upon written request of the tax commissioner or duly authorized agent or employee, the means, facilities, and opportunity for making such examinations and investigations as are hereby authorized.

The tax commissioner is hereby authorized to order any person presumed to have knowledge of the facts to appear at the office of the tax commissioner to examine such person, under oath, concerning any income which was or should have been returned for Municipal income taxation, or withheld, or any transaction tending to affect such income, and for this purpose may compel the production of books, papers, records and federal income tax returns and attendance of all persons before the tax commissioner whether as parties or witnesses, whenever the tax commissioner believes such persons have knowledge of such income or information pertinent to such inquiry.

#### Sec. 311-57. Certain Acts Deemed Violations.

The refusal to produce books, papers, records and federal income tax returns, or the refusal to submit to such examination by any employer or person subject, or presumed to be subject, to Municipal income tax or such refusal by any officer, agent or employee of a person subject to Municipal income tax or such refusal by any officer, agent or employee of a person subject to the Municipal income tax or required to withhold tax or the failure of any person to comply with the provisions of Sections 311-55 and 311-57 or with an order or subpoena of the tax commissioner authorized hereby shall be deemed a violation of this chapter, punishable as provided in Section 311-99.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-59. Duty To Retain Records.

Every taxpayer shall retain all records necessary to compute Municipal income tax liability for a period of three years from the date the annual Municipal income tax return is filed, or the Municipal income taxes required to be withheld are paid.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-61. Information Confidential.

Any information gained as a result of any returns, investigations, hearings or verifications required or authorized by this chapter is confidential and no person shall disclose such information except in accordance with a proper judicial order or in connection with the performance of that person's official duties or the official business of the Municipality as authorized by this chapter. The tax commissioner may furnish copies of returns filed under this chapter to the Internal Revenue Service and to the State of Ohio tax commissioner. Each unauthorized disclosure shall constitute a separate offense of this chapter. In addition to the penalty provided by Section 311-99, any employee of the Municipality who violates the provisions of this section relative to the disclosure of confidential information shall be guilty of an offense punishable by immediate dismissal.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-63. Interest and Civil Penalties.

- (a) All taxes imposed and all monies withheld or required to be withheld by employers under the provisions of this chapter and remaining unpaid after they become due shall bear simple interest at the rate prescribed annually by the tax commissioner of the State of Ohio in accordance with the formula set forth in section 5703.47 of the Ohio Revised Code. The interest rate(s) charged shall be the interest rate(s) in effect at the time(s) the delinquent taxes were due.
- (b) In addition to interest as provided in paragraph (a) hereof, penalties based on the unpaid Municipal income tax are hereby imposed as follows:
  - (1) For failure to pay taxes due, other than taxes withheld: One and one-half percent (1.5%) per month or fraction thereof that the amount remains past due.

- (2) For failure to remit taxes withheld from employees pursuant to Section 311-31 and owners of pass-through entities pursuant to Section 311-32: Five percent (5%) per month or fraction thereof that the amount remains past due.
- (3) For failure to make and file a return with the tax commissioner pursuant to Sections 311-19, 311-31, 311-51, or 311-65: Fifty dollars (\$50.00) per return.
- (c) In addition to interest as provided in paragraph (a) hereof and penalties as provided in paragraph (b) hereof, a penalty of one-half percent (0.5%) of the Municipal income tax required to be withheld and remitted by an employer may be imposed on employers who are required to remit payment of withholding taxes electronically and who fail to do so.
- (d) *Exceptions*. A penalty shall not be assessed on an additional tax assessment made by the tax commissioner when the Municipal income tax return has been filed in good faith and the tax paid thereon within the time prescribed by the tax commissioner; and provided further that in the absence of fraud, neither penalty nor interest shall be assessed on any additional tax assessment resulting from a federal audit providing an amended Municipal income tax return is filed and the additional tax is paid within three months after the final determination of the federal tax liability.
- (e) Upon recommendation of the tax commissioner, the director of finance may abate penalty or interest, or both, under uniform guidelines adopted by the board of review.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

# Sec. 311-65. Collection of Unpaid Taxes.

All taxes imposed by this chapter shall be collectible, together with any interest and penalties thereon, by a civil action at law. All additional assessments shall be made and all civil actions to recover Municipal income taxes and penalties and interest on Municipal income taxes shall be brought within three (3) years after the tax was due or the return was filed, whichever is later; provided however, there shall be a six-year (6) period of limitation on an additional assessment and prosecution of an offense under this chapter in the case of (i) a Municipal income tax return that omits gross income in excess of twenty-five percent (25%) of that required to be reported, (ii) filing a false or fraudulent Municipal income tax return with intent to evade the tax, or (iii) failure to file a Municipal income tax return. In those cases in which the Commissioner of Internal Revenue and the taxpayer have executed a waiver of the federal statute of limitations, the period within which an additional assessment may be made by the tax commissioner shall be extended one (1) year from the time of the final determination of the federal tax liability.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

# Sec. 311-67. Refunds of Overpayments.

Municipal income taxes erroneously paid shall not be refunded unless a claim for refund is made within three (3) years from the date on which such payment was made or the Municipal income tax return was due, or within three (3) months after final determination of the taxpayer's federal income tax liability, whichever is later.

(a) In the event that an examination of taxpayer records reveals an overpayment of Municipal income tax of five dollars (\$5) or more, a refund of such overpayment shall be made to the taxpayer within 90 days of the

date of discovery of such overpayment. In lieu of a refund of the overpayment of Municipal income tax, a taxpayer may elect that such overpayment be credited against the taxpayer's Municipal income tax liability for the subsequent taxable year(s).

- (b) In instances where the refund of overpayment of Municipal income tax is not made with in 90 days of the date of discovery of the overpayment, simple interest will be paid to the taxpayer in accordance with the formula set forth in section 5703.47 of the Ohio Revised Code. The interest rate(s) used in such calculations shall be the interest rate(s) in effect on the date(s) of the overpayment(s) and shall be calculated as of the date(s) of the overpayment(s). For purposes of computing the payment of interest on overpayments of Municipal income tax, no amount of such tax for any taxable year shall be treated as having been paid before the date on which the Municipal income tax return for that year was due without regard to any extension of time for filing that return.
- (c) Notwithstanding the provisions of paragraph (a) hereof, overpayments may be applied against any existing Municipal income tax liability of such taxpayer in lieu of a refund. The application of overpayments, if not made within 90 days of the discovery thereof, shall also include interest, calculated in accordance with the provisions of paragraph (b) hereof. If overpayments are to be applied against existing Municipal income tax liabilities of a taxpayer, the taxpayer shall be notified, in writing, of such application at the time it is made.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-69. Board of Review.

A board of review consisting of the city manager, or one designated to serve as the representative of the city manager, a citizen member designated by the city manager, and the director of finance, or one designated to serve as the representative of the director of finance, is hereby created. The members of the Board of Review shall be appointed for a term of two years.

A majority of the members of the board of shall constitute a quorum. The board shall adopt its own procedural rules and shall keep a record of its transactions. Such records are not public records available for inspection under section 149.43 of the Ohio Revised Code. Hearings requested by a taxpayer before a board of review created pursuant to this section are not meetings of a public body subject to section 121.22 of the Ohio Revised Code.

Whenever the tax commissioner issues a decision regarding a Municipal income tax obligation that is subject to appeal as provided in this section, or in an ordinance or regulation of the Municipality, the tax commissioner shall notify the taxpayer in writing at the same time of the taxpayer's right to appeal the decision and of the manner in which the taxpayer may appeal the decision.

Any taxpayer who is aggrieved by a decision by the tax commissioner and who has filed with the Municipality the required returns or other documents pertaining to the Municipal income tax obligation at issue in the decision may appeal the decision to the board of review by filing a request with the board. The request shall be in writing, shall state with particularity why the decision should be deemed incorrect or unlawful, and shall be filed within thirty (30) days after the tax commissioner has issued the decision.

The imposition of penalty and interest as prescribed in this chapter is not a sole basis of appeal to the board of review.

The board of review shall schedule a hearing within forty-five (45) days after receiving the request, unless the taxpayer waives a hearing. If the taxpayer does not waive the hearing, the taxpayer may appear before the board and may be represented as provided by law.

The board may affirm, reverse, or modify the tax commissioner's decision or any part of that decision. The board shall issue a final decision on the appeal within ninety (90) days after the board's final hearing on the appeal, and send a copy of its final decision by ordinary mail to all of the parties to the appeal within fifteen (15) days after issuing the decision. The taxpayer or the tax commissioner may appeal the board's decision as provided in section 5717.011 of the Ohio Revised Code.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-71. Allocation of Funds.

The revenues collected under the provisions of Section 311-5 shall be deposited in the "Undistributed Income Tax Fund" and thereafter the revenue from the first 1.7 percent Municipal income tax rate imposed under Section 311-5 shall be allocated to the Undistributed Income Tax Fund, and the revenues from the remaining three-tenths of 1 percent (0.3%) Municipal income tax rate imposed under Section 311-5 shall be allocated to the Income Tax--Transit Fund. Each year council shall appropriate from said funds the amount of money it determines necessary for current operating expenses and permanent improvements allocable to said funds; except that from the Undistributed Income Tax Fund, not less than fifteen-hundredths of 1 percent (0.15%) shall be used as required by the charter for the financing of permanent improvements, including the pledging of such tax revenue for payment of principal and interest on bonds and notes issued by the Municipality to finance permanent improvements.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

# Sec. 311-72. Allocation of Infrastructure Levy Funds.

The revenues collected pursuant to the imposition of tax in Section 311-2 shall be deposited into the "Undistributed Income Tax Fund" and shall thereafter be allocated to the "Income Tax--Infrastructure Fund." Each year, council shall appropriate from said funds the amount of money it determines necessary for current operating expenses and permanent improvements allocable to said fund in accordance with the purposes set forth in Section 311-2.

The tax imposed by Section 311-2 shall be levied and collected in accordance with the provisions of this Chapter.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

#### Sec. 311-73. Credit for Tax Paid to Another Municipality/County.

(a) <u>Residents</u>. When a resident is subject to and has paid, or has acknowledged liability for, a municipal income tax in another taxing municipality or Joint Economic Development District on the same income taxable under this chapter, regardless of whether such other taxing municipality or Joint Economic Development District allows credit to its nonresidents, such resident may claim a credit against the tax imposed by this chapter in an amount equal to the lesser of (i) the amount of such tax

paid to such other taxing municipality or Joint Economic Development District or (ii) the Municipal income tax imposed by this chapter on such income. In no case shall the credit exceed the tax assessed under this chapter on the resident's taxable income that is also subject to tax in another taxing municipality or Joint Economic Development District.

- (b) A resident owner of a pass-through entity that does not conduct business in the Municipality and that has paid, or has acknowledged liability for, an income tax in another taxing municipality or Joint Economic Development District may claim a credit equal to the lesser of the following amounts:
  - (1) The resident owner's proportionate share of the amount, if any, of income tax paid by the pass-through entity to another taxing municipality or Joint Economic Development District in the State; or
  - (2) The resident owner's proportionate share of the amount of Municipal income tax that would be imposed on the pass-through entity if the pass-through entity conducted business in the Municipality.

In no case shall the credit authorized by this Section 311-73(b) exceed the Municipal income tax assessed under this chapter on the taxable income that is also subject to tax in another taxing municipality or Joint Economic Development District.

- (c) Where applicable (i) the credits provided by Ohio Revised Code sections 718.021 and 718.121 shall be available to residents, and (ii) the credit provided by Section 311-32 shall be available to resident owners.
- (d) Nonresidents. Except as provided in Ohio Revised Code sections 718.021 and 718.121 and Section 311-32, when a nonresident is subject to the tax imposed by this chapter and is also subject to tax on the same income in the municipal corporation in which the nonresident resides, such nonresident shall not be allowed any credit against or claim of refund for Municipal income tax, and the Municipality will not acknowledge or allow any claim for refund of any portion of the Municipal income tax so levied.
- (e) <u>Claim for Credit</u>. The credits provided for in this Section 311-73 will not be allowed unless the same are claimed in a timely return or form acceptable to, and filed with, the tax commissioner. In the event a taxpayer fails, neglects or refuses to file such timely return or form, he shall not be entitled to such credit and shall be liable for the full amount of tax assessed by this chapter, together with such interest and penalties, both civil and criminal, as prescribed in this chapter.
- (f) No credit shall be given to any taxpayer for any school district income tax.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

## Sec. 311-75. Saving Clause.

This chapter shall not apply to any person or to any property as to whom or which it is beyond the power of council to impose the tax herein provided for. If any sentence, clause, section, or part of this chapter, or any tax against or exception granted any person or form of income specified herein is found to be unconstitutional or illegal or invalid, such unconstitutionality, illegality, or invalidity shall affect only such clause, sentence, section, or part of this chapter and shall not affect or impair any of the remaining provisions, sentences,

clauses, sections or other parts of this chapter. It is hereby declared to be the intention of council of the City of Cincinnati that this chapter would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included therein.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

## Sec. 311-80. Public Hearings on Modifications to This Chapter.

Not less than seven days before the adoption by the city council of any ordinance adopting, amending or repealing any provision of this chapter, a public hearing shall be held by the council or a committee of the council designated by the council. Notice of the time and place of the public hearing and the text of the proposed modification to this chapter shall be published in the City Bulletin for two consecutive weeks within the thirty-day (30) period immediately preceding the public hearing. The council, after having conducted or reviewed the substance of the public hearing, may adopt, amend or repeal any provision of this chapter.

In the event that any provision of this chapter is modified by operation of law or is declared to be unconstitutional, the modification of the provisions of this chapter to conform to the requirements of law or judicial decision shall not be subject to the public hearing requirement set forth in this section.

(Ordained by Ord. No. 385-2004, § 1, eff. 12-8-04)

## Sec. 311-99. Violations; Criminal Penalties.

No person shall:

- (a) Fail, neglect or refuse to make any return or declaration required by this chapter; or
- (b) Make an incomplete, false or fraudulent return; or
- (c) Fail, neglect or refuse to pay the tax, penalties or interest imposed by this chapter; or
- (d) Fail, neglect or refuse to withhold the tax from such person's employees and remit such withholding tax to the tax commissioner; or
- (e) Refuse to permit the tax commissioner or any duly authorized agent or employee to examine the books, records, papers and federal income tax returns of such person or such person's employer; or
- (f) Fail to appear before the tax commissioner and to produce the books, records, papers or federal income tax returns of such person or person's employer upon order or subpoena of the tax commissioner; or
- (g) Refuse to disclose to the tax commissioner any information with respect to the income or net profits of such person or such person's employer; or
- (h) Fail to comply with the provisions of this chapter or any order or subpoena of the tax commissioner; or

- (i) Fail, neglect, or refuse to make any payment on the estimated tax for any year or part of any tax year as required by Section 311-45; or
- (j) Fail, as president or treasurer of a corporation, to cause the tax withheld from the qualifying wages of the employees of such corporation pursuant to this chapter to be paid to the Municipality in accordance with the provisions of Section 311-31; or
- (k) Attempt to do anything whatever to avoid the payment of the whole or any part of the tax, penalties or interest imposed by this chapter.

Whoever violates any provision set forth above shall be guilty of a misdemeanor of the first degree and may be assessed such penalties, including fines and/or imprisonment, as the same are set forth in sections 2929.21 and 2929.31 of the Ohio Revised Code, whichever may be applicable.

Prosecutions for an offense made punishable under this section or any other provision of this chapter shall be commenced within three years after the commission of the offense, provided that in the case of fraud, failure to file a return, or the omission of 25 percent or more of income required to be reported, prosecutions may be commenced within six (6) years after commission of the offense.

The failure of any employer, taxpayer or person to receive or procure a Municipal income tax return, declaration or other required form shall not excuse such person from making any information return, return or declaration, from filing such form, or from paying the Municipal income tax.

The term "person" as used in this section shall, in addition to the meaning prescribed in Section 311-3-P of this chapter, include in the case of a pass-through entity or corporation not having any owner or officer within the Municipality, any employee or agent of such pass-through entity or corporation who can be found within the corporate limits of the Municipality.

Pursuant to Sections 801-5, 801-11 and 801-25 of the Cincinnati Municipal Code, the issuing authority of any license or permit may deny issuance of any original license or permit, prohibit subsequent assignment of any license, or revoke any existing license or permit for failure to comply with the provisions of this chapter.